UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,442	06/13/2001	Trevor A. Wells	10010621-1	6914

7590 07/08/2005	**EXAMINER**
HEWLETT-PACKARD COMPANY	POON, KING Y
Intellectual Property Aministration	
P.O. Box 272400	
Fort Collins, CO 80527-2400	

ART UNIT	PAPER NUMBER
2624	

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 May 2005</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>13 June 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

2.   Claims 1- 43 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

3.   Claim 1 recites the limitation "report level" in lines 12 and 13. There is

insufficient antecedent basis for this limitation in the claim.

It is unclear the report level of lines 11, 12 and 13 is referring to the report level

that is being set to the group average or the report level that is before being set to the

group average of lines 7-8.

Regarding claims 2-12: Claims 2-12 are rejected under 35 U.S.C. 112, second

paragraph because they depend on claim 1; therefore, having the same indefinite

problem.

4.   Claim 13 recites the limitation "report level" in lines 9 and 10. There is

insufficient antecedent basis for this limitation in the claim.

It is unclear the report level of lines 9 and 10 is referring to the report level that is

being set to the group average or the report level that is before being set to the group

average of lines 7-8.

Regarding claims 14-19: Claims 14-19 are rejected under 35 U.S.C. 112, second paragraph because they depend on claim 13; therefore, having the same indefinite problem.

5.   Claim 20 recites the limitation "report level" in lines 9, 11 and 12. There is insufficient antecedent basis for this limitation in the claim.

It is unclear the report level of lines 9, 11, 12 is referring to the report level that is being set to M reading average or the report level that is being set to the highest of N readings.

Regarding claims 21-35: Claims 21-35 are rejected under 35 U.S.C. 112, second paragraph because they depend on claim 20; therefore, having the same indefinite problem.

6.   Claim 36 recites the limitation "report level" in lines 11 and 12. There is insufficient antecedent basis for this limitation in the claim.

It is unclear the report level of lines 11, 12 is referring to the report level that is being set to the group average or the report level that is before being set to the group average of lines 7-8.

Regarding claims 37-38: Claims 37-38 are rejected under 35 U.S.C. 112, second paragraph because they depend on claim 36; therefore, having the same indefinite problem.

7.   Claim 39 recites the limitation "report level" in lines 11 and 12. There is

insufficient antecedent basis for this limitation in the claim.

It is unclear the report level of lines 11, 12 is referring to the report level that is

being set to the group average or the report level that is before being set to the group

average of lines 7-8.

Regarding claims 40-41: Claims 40-41 are rejected under 35 U.S.C. 112,

second paragraph because they depend on claim 39; therefore, having the same

indefinite problem.

8..   Claim 42 recites the limitation "report level" in line 7. There is insufficient

antecedent basis for this limitation in the claim.

It is unclear the report level of lines 7 is referring to the report level that is being

set to the average of a group or the initial report level.

Regarding claim 43: Claim 43 is rejected under 35 U.S.C. 112, second

paragraph because they depend on claim 42; therefore, having the same indefinite

problem.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10.   Claims 13, 15-19, 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Koehler (US 6,619,206).

Regarding claim 13: Koehler teaches a method comprising: setting an initial toner report level (every program must have a starting point, the very first average of column 15, line 1) averaging a group of toner level sensor readings (column 14, lines 65-66) to produce a group average (average, column 15, lines 1-15); if the group average is less than the report level; setting the report level to the group average (column 15, lines 1-15, the percentage/average is recalculated for new groups of samples and the new percentage/average is used to replace the old percentage/average; in doing so, the new percentage/average is used to replace the old percentage/average is inherent under the situation that new percentage/average is less than the old percentage/average) averaging a subsequent group of toner level sensor readings to produce a subsequent group average (column 15, lines 1-15), and if the subsequent group average is less than the report level, setting the report level to the subsequent group average.

Regarding claim 15: Koehler teaches wherein the setting an initial toner report level comprises receiving toner level sensor readings and selecting the highest reading as the toner report level (predominant, column 15, lines 1-2).

Regarding claim 16: Koehler teaches continually repeating the recited actions of: averaging a subsequent group of toner level sensor readings to produce a subsequent

average; and if the subsequent group average is less man the report level, setting the

report level to the subsequent group average (column 15, lines 1-15, also see claim 13).

Regarding claim 17: Koehler teaches prior to setting an initial toner report level,

setting the report level to an arbitrary value (before, the program starts, the memory

state/contents, values is arbitrary).

Regarding claim 18, Koehler teaches a print device, having computer-readable

media with computer- readable instructions for performing the method as recited in

claim 13 (see Koehler column 8:lines 10- 20 illustrating program instructions).

Regarding claim 19, Koehler teaches a computer, having computer-readable

media with computer- readable instructions for performing the method as recited in

claim 13 (see Koehler column 8:lines 10- 20 illustrating program instructions taking the

form of a computer).

Regarding claim 42: Koehler teaches a system comprising: a sensor (column 14,

lines 52) configured to sense the amount of a marking agent, a printer controller (62, fig.

6) configured to set an initial report level of the marking agent (every program must

have a starting point, the very first average of column 15, line 1) the printer controller

further configured to successively receive and average groups of readings from the

sensor (column 15, lines 1-15), and if the average of any group of readings is less than

the report level to set the report level to that average (column 15, lines 1-15, the

percentage/average is recalculated for new groups of samples and the new

percentage/average is used to replace the old percentage/average; in doing so, the new

percentage/average is used to replace the old percentage/average is inherent under the

situation that new percentage/average is less than the old percentage/average).

Response to Arguments

11.   Claims 13, 15-19, 42 are rejected based on the examiner's assumed

interpretations on the indefinite claims. Please see detailed office action. Claims 1-12,

14, 20-41, 43 is cannot be rejected using Koehler. The patentability cannot be

determined at the present time due to the indefinite nature of claims 1-12, 14, 20-41, 43.

With respect to applicant's argument that Koehler does not teach setting an initial

toner report level, has been considered.

In reply: Column 14, lines 65-66, column 15, lines 1-15 teaches setting an

average values of a toner level (toner report level) base on sampled values. The very

first value from the very first group of samples are the initial toner report level.

With respect to applicant's argument that Koehler does not teach changing

threshold ink level for fountain based on reading of ink level sensors, has been

considered.

In reply: The new averages, column 15, lines 1-15, are threshold ink level and is

being used for comparing with a predetermined percentage/value by the system
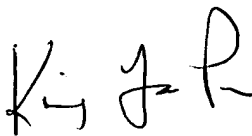
computer.

Conclusion

12.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to King Y. Poon whose telephone number is 571-272-7440. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Moore can be reached on 571-272-7437. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 5, 2005

KING Y. POON
PRIMARY EXAMINER